

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Executive Committee
<b>Date of Meeting:</b>	17 November 2021
<b>Subject:</b>	Environmental Health Enforcement Policy and Fixed Penalty Scheme
<b>Report of:</b>	Interim Environmental Health Manager
<b>Corporate Lead:</b>	Head of Community Services
<b>Lead Members:</b>	Lead Member for Clean and Green Environment
<b>Number of Appendices:</b>	One

## **Executive Summary:**

The Environmental Health (EH) Enforcement Policy is the overarching policy to ensure that the actions taken by officers are proportionate and for the benefit of securing the health, safety and welfare of our community. The policy is subject to periodic review. Having been adopted by the Council in August 2017 it is considered this is an appropriate time to review the policy to ensure it remains fit for purpose. The principles set out within the policy are reflected in the Council's overarching Corporate Enforcement Policy which was adopted in 2020. The draft policy with proposed changes highlighted is attached at Appendix 1. Councillors will note that there are no material changes other than updating legislation and house-keeping changes.

Fixed penalty notices are available to the Council in connection with a variety of environmental offences including fly tipping, dog fouling and abandoned vehicles. The use of fixed penalty notices provides the Council with an efficient and proportionate means for the disposal of low-level environmental offences without recourse to Court action.

The statutes governing environmental offences prescribe a maximum fine level, minimum fine level and minimum discounted level. For some offences the Council has discretion to set the fine levels within the statutory maximum and minimum levels. The Council also has discretion over several operational and procedural elements relating to fixed penalty notices, such as the minimum age of persons on whom notices will be served, payment options, and the offering of a non-statutory appeals process. The Committee is also asked to approve the Fixed Penalty Notice Scheme which will form part of the EH Enforcement Policy and be added as an Appendix to the policy.

This Committee also approved the Council's approach to Civil Penalty, Rent Repayment Order and Minimum Energy Efficiency Standards in Privately Rented Homes in March 2021 and this scheme will also be added to the EH Enforcement Policy as an Appendix. No change is proposed to this element of the policy.

## **Recommendation:**

- 1. That the updated and refreshed Environmental Health Enforcement Policy, and Appendix 1 setting out the use of Fixed Penalty Notices, be APPROVED**
- 2. That the Head of Community Services be authorised to approve future minor amendments in consultation with One Legal and the Lead Member for Clean and Green Environment.**

## **Reasons for Recommendation:**

The Environmental Health Team is committed to ensuring the health, safety and welfare of our

community and to doing so in a sustainable and proportionate manner.

Tackling environmental crime within the Policy adopted in 2017 has evidenced the appropriate use in many cases as an alternative to prosecution.

The publication of the revised fixed penalty scheme will consolidate the Council's approach to the use of fixed penalty notices. This will ensure consistency amongst Enforcement Officers and provide clear information to members of the public regarding the offences for which the Council will use fixed penalty notices and the resulting penalty fine levels.

**Resource Implications:**

None.

**Legal Implications:**

The implementation of the amended policy complies with the individual legislative requirements of the relevant legislation as set out in Section 10 of the Fixed Penalty Notice Scheme attached and therefore fixed penalty notices can be issued in lieu of Prosecution for the relevant offences.

**Risk Management Implications:**

The Council has an action plan to address the problem of environmental crime within Tewkesbury Borough. Progress with the plan is reported to the Overview and Scrutiny Committee. Failure to make progress with this plan or effectively use the statutory remedies available to combat environmental offences may represent a reputational risk to the Council.

**Performance Management Follow-up:**

Regular updates on enforcement are shared with the Lead Member for Clean & Green Environment at monthly meetings and progress on dealing with enviro-crimes in particular are regularly report to the Overview and Scrutiny Committee. At officer level progress with the plan and use of fixed penalty notices is reviewed at monthly team meetings under the direction of the Head of Community Services.

**Environmental Implications:**

A commitment to the use of fixed penalty notices for environmental offences may over the long term reduce the prevalence of these offences within Tewkesbury Borough and therefore improve environmental quality.

## 1.0 INTRODUCTION/BACKGROUND

- 1.1 The Environmental Health (EH) Enforcement Policy underpins the way the service operates to ensure sustainable and proportionate actions are taken to ensure the health and safety of residents and to ensure that business operates in a safe way. The Policy seeks to ensure that business supports and operates in a manner to protect our residents and officers will work with business giving advice and guidance.

- 1.2** Fixed penalty notices are available as an enforcement option for the full range of environmental offences which are investigated by the Council's Environmental Health Section. Payment of a fixed penalty does not result in a criminal record and discharges the offender of criminal liability in connection with the offence. Fixed penalty notices provide the council with a cost-effective and proportionate means of disposing of low-level environmental offences without recourse to resource intensive prosecutions and court proceedings. This should benefit the Council by allowing officers more time to devote to the most serious cases.
- 1.3** There are no significant changes to the policy other than adding legislation, house-keeping changes and consolidating a number of documents into a single policy document.

## **2.0 CIVIL PENALTIES**

- 2.1** Civil penalties are an alternative to prosecution and that policy was approved by this Committee in March 2021 and will be added to the EH Enforcement Policy as an Appendix.
- 2.2** No change is proposed to this element of the element of the policy.

## **3.0 FIXED PENALTY POLICY**

- 3.1** A proposed updated Fixed Penalty Scheme for the Council is provided in the appendix to this report. The scheme forms part of the policy and outlines the Council's approach to the use of fixed penalty notices and clarifies the Council's position on several key operational matters relating to the use of fixed penalty notices.
- 3.2** Operational considerations for the Council to consider in relation to fixed penalty notices include the minimum age of persons on whom notices will be served, whether or not to offer a non-statutory appeal option against a notice, and whether a person in receipt of a notice can pay by instalments.

### **MINIMUM AGE FOR RECEIPT OF A FIXED PENALTY NOTICE**

- 3.3** The statutory minimum age for receipt of a fixed penalty notice is 10 years old. However, should a Local Authority wish to serve a fixed penalty notice on a young person then specific policies must be in place governing this. The Environmental Health Section is not aware that littering in the vicinity of schools represents a particular problem within Tewkesbury Borough. Therefore, the draft fixed penalty policy states that the minimum age of a person on whom the Council will serve a fixed penalty notice will be 16 years old.

### **FIXED PENALTY NOTICE APPEAL OPTIONS**

- 3.4** There is no automatic statutory right of appeal for fixed penalty notices and the Council has discretion to decide whether or not to offer a non-statutory appeal process. The draft fixed penalty policy states that an appeal facility will not be available for fixed penalty notices. If a recipient of a fixed penalty wishes to challenge the fixed penalty notice this can be done through the Magistrates Court.

## **TIME PERIOD IN WHICH TO PAY A FIXED PENALTY NOTICE**

- 3.5** The time period for payment of a fixed penalty notice must be at least 14 days. The Council has discretion to extend the length of the payment period beyond this point. The Council also has discretion to set the time period in which a fixed penalty must be paid in order for an offender to benefit from the specified discount. The draft fixed penalty scheme states that the full penalty must be paid within 21 days from receipt of the notice, and within 10 days in order for the recipient to benefit from the discount.

## **FIXED PENALTY PAYMENT OPTIONS**

- 3.6** Fixed penalty notices are usually paid in full by a single payment. The Council does have discretion to allow alternative payment options such as deferred payment or payment by instalments. Some of the offences for which the Council serves fixed penalty notices are summary offences and must be tried at a Magistrates Court within 6 months from the date of the offence. The provision of deferred payments may therefore compromise the Council's ability to prosecute the original offence should it wish to do so.
- 3.7** Furthermore, the processing of sundry debtors in connection with installed payments may result in administrative costs to the Council which exceed the cost of the fixed penalty. Therefore, the draft policy states that the Council will not accept deferred payment or payment by instalments for fixed penalty notices. In the event that an offender suggests that they are unable to pay a fixed penalty notice then this matter may still be referred to One Legal for consideration.
- 3.8** The Council will be introducing new customer payment methods as part of its current digital strategy. This will include the facility to make payments at pay-points located in shops and post offices located throughout the borough. It is expected that the new payment options that will be introduced as part of the digital strategy will be available for payment of fixed penalty notices. Monitoring of progress with the payment of fixed penalty notices will be the responsibility of the Environmental Health Section. Instruction and training on the processing, monitoring and recording of fixed penalty notices will be provided to all relevant staff.

## **4.0 CONSULTATION**

- 4.1** None.

## **5.0 OTHER OPTIONS CONSIDERED**

- 5.1** None.

## **6.0 RELEVANT COUNCIL POLICIES/STRATEGIES**

- 6.1** Tewkesbury Borough Council: Corporate Enforcement Policy.

## **7.0 RELEVANT GOVERNMENT POLICIES**

- 7.1** Fixed Penalty Notices: Issuing and Enforcement by Councils.

<https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

## **8.0 RESOURCE IMPLICATIONS (Human/Property)**

- 8.1** None.

**9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)**

**9.1** A commitment to the use of fixed penalty notices for environmental offences may over the long term reduce the prevalence of these offences within Tewkesbury Borough and therefore improve environmental quality.

**10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)**

**10.1** None.

**11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS**

**11.1** None.

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<b>Background Papers:</b>	Report to Executive Committee 30 August 2017 – Environmental Health Enforcement Policy.
<b>Contact Officer:</b>	Interim Environmental Health Manager Kath.stent@tewkesbury.gov.uk
<b>Appendices:</b>	1 - Draft Fixed Penalty Notice Scheme. 2 - Civil Penalty Policy approved March 2021.